

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:WR:RMD:DEN:TL-N-4398-99  
JSDennett

date: 15 OCT 1999

to: John A. Rigler, Taxpayer Advocate  
Helena POD

from: Assistant District Counsel, Rocky Mountain District, Denver

---

subject: [REDACTED]: Congressional Inquiry  
Taxable Year: [REDACTED]

You have requested the assistance of this office in addressing the concerns of the above-listed taxpayers' accountant. The issue is whether [REDACTED], an employee for a logging company, is entitled to deduct expenses for traveling from his residence to job sites as a logger. The Service has taken the position that it will not acquiesce in the Walker v. Commissioner, 101 T.C. 537 (1993), which addressed the deduction of expenses by loggers and will continue to litigate this issue. This memorandum, which was originally provided to you on August 2, 1999, has been reviewed by our National Office. This memorandum has been modified due to a case that was handed down by the Tax Court on August 3, 1999 and Rev. Rul. 99-7, 1999-5 I.R.B. 4.

Facts

The taxpayer-husband, [REDACTED], is a logger and travels from his residence to various jobs in the several different forests of Western Montana. [REDACTED] operates a shop at his residence where he maintains his saws and other equipment used in relation to his log falling operation. [REDACTED] deducted the expense of traveling to these job sites plus meals and lodging while away overnight.

It should be noted that [REDACTED] is an employee for a logging company and is not self-employed. [REDACTED]'s situation appears to be similar to the situation of the taxpayer in Walker v. Commissioner, supra. That is, [REDACTED] drives daily from his residence to work sites some distance from his residence but within the metropolitan area in which the logger resides. The work sites are temporary. The logger stores tools and performs maintenance on his equipment at the residence. Other than the residence, the logger has no other site at which

he works regularly. There is, however, no indication that [REDACTED] [REDACTED] conducts substantial administrative or management activities from his residence with respect to his log cutting activities since he is an employee for a logging company.

If the facts are not as listed above or additional information is available, please contact this office as soon as possible as any new facts may impact the advice provided in this memorandum.

#### Legal Analysis

Section 162(a) allows a deduction for all ordinary and necessary expenses paid or incurred in carrying on a trade or business. Notwithstanding section 162(a), the cost of commuting between a taxpayer's residence and a regular place of business is a nondeductible personal expense. Commissioner v. Flowers, 326 U.S. 465, 473-474 (1946); Treas. Reg. § 1.162-2(e); Treas. Reg. § 1.262-1(b)(5).

Rev. Rul. 90-23, 1990-1 C.B. 28, however, allows a taxpayer to deduct the cost of transportation between the taxpayer's residence and a temporary work site, if the taxpayer also has a regular place of business. In Walker, the Tax Court held that a taxpayer's residence is a regular place of business for purposes of Rev. Rul. 90-23, if the taxpayer performs some work at the residence. Thus, the court held that Walker, who worked at temporary work sites within the Black Hills National Forest and had no regular place of business outside his residence, was entitled to deduct under Rev. Rul. 90-23 costs that were otherwise nondeductible commuting expenses.<sup>1</sup> In so holding, the Tax Court concluded that Rev. Rul. 90-23 was a concession on the Service's part.

In Rev. Rul. 94-47, 1994-2 C.B. 18, the Service amplified and clarified Rev. Rul. 90-23. Rev. Rul. 94-47 provides that a taxpayer's residence does not qualify as a regular place of business for purposes of Rev. Rul. 90-23, unless the residence also qualifies as the taxpayer's principal place of business for purposes of section 280A(c)(1)(A).<sup>2</sup> Thus, under Rev. Rul.

---

<sup>1</sup> Rev. Rul. 93-86, 1993-2 C.B. 71 discusses the Service's position on the deductibility of meals, lodging, and transportation expenses while away from home temporarily.

<sup>2</sup> The Tax Court has held that the cost of transportation between a taxpayer's residence and work sites is deductible if the taxpayer's home is the taxpayer's "principal place of

94-47, a taxpayer whose residence is not his principal place of business and who has no regular place of business other than the residence, may not deduct the cost of transportation between his residence and a temporary work site, notwithstanding Walker and Rev. Rul. 90-23.<sup>3</sup>

In Walker, the Tax Court, relying on the standards set in Commissioner v. Soliman, 506 U.S. 168 (1993), specifically held that the taxpayer's residence did not qualify as his principal place of business. Since the situation of the logger in question here is the same as, or similar to, the situation of the taxpayer in Walker, his residence will not qualify as his principal place of business. Accordingly, under Rev. Rul. 94-47, the logger has no regular place of business for purposes of Rev. Rul. 90-23, and therefore may not deduct under that ruling the cost of his transportation between his residence and his work sites. Furthermore, in Strohmaier v. Commissioner, 113 T.C. No. 5 (1999), the court applied Rev. Rul. 94-47 retroactively.

#### Conclusion

Under Rev. Rul. 94-47, a logger whose residence is not his principal place of business, and who has no regular place of business outside the logger's residence, may not deduct under Rev. Rul. 90-23 daily transportation expenses incurred in traveling between the logger's residence and temporary work places. Thus, where a taxpayer in such a situation has no authority for claiming deductions for transportation expenses other than Rev. Rul. 90-23 and the Tax Court's decision in Walker, the Service will litigate this issue for the taxable years 1994, 1995, 1996, and 1997. In addition, the court's recent decision in Strohmaier, applied Rev. Rul. 94-47 retroactively.

---

business." Wisconsin Psychiatric Servs., Ltd. v. Commissioner, 76 T.C. 839, 849 (1981); Curphey v. Commissioner, 73 T.C. 766, 777-778 (1980).

<sup>3</sup>In Burleson v. Commissioner, T.C. Memo. 1994-364, the Tax Court refused to apply Rev. Rul. 94-47 to a logger whose situation was substantially the same as that of the taxpayer in Walker. However, the court refused to apply the revenue ruling because it was released after the case had been submitted to the court fully stipulated.

Please note that for tax years beginning after December 31, 1998, section 280A(c)(1) provides that the term "principal place of business" for purposes of subparagraph (A) "includes a place of business which is used by the taxpayer for the administrative or management activities of any trade or business of the taxpayer if there is no other fixed location of such trade or business where the taxpayer conducts substantial administrative or management activities of such trade or business." Under this language, the residence of a logger whose situation is similar to that in Walker may qualify as the logger's principal place of business, depending on the facts in each case. Thus, it is uncertain whether this advice will apply to tax years beginning after December 31, 1998. Furthermore, Rev. Rul. 99-7, 1999-5 I.R.B. 4, modifies (regarding the definition of temporary work location) and supercedes Rev. Ruls. 90-23 and 94-47.

If you have any questions, please call me at (303) 844-3258.

JERRY L. LEONARD  
Assistant District Counsel

By:



JOAN S. DENNETT  
Attorney